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Mortgage Moratorium Laws

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CURRENT LEGISLATION

Editor—JOSEPH POKART

MORTGAGE MORATORIUM LAWS.—After almost tearful pleas by jurists, mortgagors and others, the legislature has finally enacted two laws¹ for the relief of the mortgage situation.

Due to the increasing number of mortgage foreclosures, the real estate market was demoralized and land values were depressed to an absurdly low level. The mortgage-lending institutions refused to continue loans and insisted that they be liquidated. The large number of foreclosures caused other mortgagees to become panicky and press for the payment or reduction of their loans. The vicious cycle of increasing mortgage foreclosures compelled further foreclosures and thereby created a situation where it became impossible to ascertain the true land value of any given piece of property. Finally, even the lenders concluded that the very purpose for the foreclosure was defeated.

On the other hand, large deficiency judgments were being taken against mortgagors. The mortgagor, in making his investment, did so under the belief that in the event he was unable to continue that the property would bring enough on a forced sale to at least satisfy the mortgage. Instead, he found himself in a situation which was unimaginable. He not only lost his property, which is worth, in normal times, at least the amount of the mortgage, but he was also obliged to pay a substantial amount of the mortgage debt by way of a deficiency judgment.

The courts and the general public were shocked at the inequity of the mortgagor's position. The courts held, however, that they had no authority to grant any relief and relegated the mortgagor to the legislature.²

The first law is a moratorium on foreclosures and provides:

1.³ No action or proceeding may be brought for the foreclosure of a mortgage on real property because of a default in the payment of principal. Where the default is other than on principal, then the act does not apply.

2.⁴ No action may be brought upon any loan, bond, extension agreement or other evidence of indebtedness, if it originated or was

¹ N. Y. CIVIL PRACTICE ACT (1933) §§1077a to 1077g and N. Y. CIVIL PRACTICE ACT (1933) §§1083a, 1083b.

² *Loma Holding Corp. v. Cripple Bush Realty Corp.*, N. Y. L. J., May 22, 1933, p. 3084; *City Bank, Farmers Trust Co. v. Prestyn Court Realty Co., Inc.*, N. Y. L. J., June 10, 1933, p. 3503; *Dime Savings Bank of Brooklyn v. Danley Realty Co.*, N. Y. L. J., June 27, 1933, p. 3839.

³ N. Y. CIVIL PRACTICE ACT (1933) §1077a.

⁴ *Ibid.* §1077b.

originally contracted for simultaneously with the mortgage and is secured solely by such mortgage. No action shall be maintainable on a guaranty of payment of the principal of such mortgage or upon a guaranty of any obligation secured thereby. No action shall be maintainable upon a guaranty of payment of any share or part of any bond and mortgage represented by a certificate, bond or other instrument, nor upon any note, bond or other instrument which is a part of a series issued against or secured by the deposit of a bond and mortgage so long as interest at the rate prescribed shall be paid on such instruments.

3.⁵ In order to prevent the holder of a guarantee from losing any of his rights, it is provided that the failure of the holder to demand payment, give notice of non-payment or bring any action thereon shall not discharge any endorser, guarantor or surety from liability.

4.⁶ Where the property involved is not used for farming purposes or dwellings occupied by the owner and with not more than one other family, persons, who would otherwise have the right to foreclose the mortgage, may apply to the Court to require the owner to pay over to the mortgagee the surplus,⁷ or such part as the Court may determine, that the property produced during the six months prior to the application. The surplus is to be applied to reduce past due principal. The mortgagee may maintain an action to foreclose if the payment of the surplus is not made within thirty days after service of a copy of the order directing payment. An order permitting foreclosure without further proof will be made if the owner fails to produce all data or adequate data as to income and disbursements for the inspection of the Court and the mortgagee.

5.⁸ Any waiver of the protection of this statute shall be void as against public policy.

6.⁹ This act is made applicable to any action brought before its enactment, unless it has proceeded to final judgment directing the sale of the mortgaged premises. Where the action has not so proceeded then any defendant, within thirty days after the act takes effect, may have the action dismissed upon payment to plaintiff of taxable costs and remedying any default other than payment of principal.

⁵ *Ibid.*

⁶ *Ibid.* §1077c.

⁷ The amount remaining after deducting interest, taxes and all carrying charges from the income for the six months.

⁸ *Supra* note 3, §1077d.

⁹ *Ibid.* §1077e.

7.¹⁰ The statute expressly exempts from its application any mortgage held by a savings and loan association which is payable in monthly installments over a period of more than ten years from the time of making the loan, any mortgage made in accordance with the provisions of the Banking Law or any mortgage dated on or after July 1, 1932.

8. The period of the emergency, upon which this act is based, is from the date it takes effect until July 1, 1934.

The second act is designed to relieve against deficiency judgments. It provides:

1.¹¹ No deficiency judgment shall be granted unless at the time of making a motion for an order confirming the sale or within ninety days after date of sale, the party to whom the residue of the debt is owing makes a motion, on notice to the debtor, for leave to enter a deficiency judgment. The Court will then determine, on affidavit or as it may direct, the fair and reasonable value of the mortgaged premises as of the date of the sale or as of such nearest earlier date as there shall have been any market value. A judgment for the deficiency may thereafter be entered.

2.¹² If no motion for a deficiency judgment is made then the proceeds of the sale shall be deemed in full satisfaction of the mortgage debt and no further right to recover any deficiency shall exist.

3.¹³ Any party who is directly or contingently liable on an indebtedness secured solely by a mortgage on real property shall have the right to set off the fair and reasonable market value of the property, less the amounts owing on prior liens and encumbrances, where a money judgment is demanded against him, if the action is pending at the time the act takes effect or is thereafter commenced during the period of the emergency.

4.¹⁴ This act does not apply to mortgages dated on or after July 1, 1932, or to any bond, guarantee, extension agreement or other agreement in connection with indebtedness secured by a mortgage dated on or after July 1, 1932.

5. This act is to be effective until July 1, 1934.

These acts are conservative and fair and provide the necessary relief required under the existing conditions. The mortgagee is benefited by the fact that the number of foreclosures will be reduced and thereby prevent a further depreciation in market value.

¹⁰ *Ibid.* §1077g.

¹¹ *Ibid.* §1083a.

¹² *Ibid.*

¹³ *Ibid.* 1083b.

¹⁴ Laws 1933, c. 794, §4.

The mortgagor is benefited because the acts have given him a new lease on life, a breathing spell, and has reduced his liability on his bond by giving him the advantage of having the full value of the property set off against the debt on foreclosure.

It is respectfully submitted, however, that the relief granted is only temporary and is not in full solution of the problem. It is not likely that real estate values and the property owner's financial condition will have so improved by July, 1934, that he will be able to pay off the mortgage loans. It is the writer's opinion that the acts should be extended for at least another year so that the full benefit thereof may be realized.

JOSEPH POKART.

SECURITIES ACT OF 1933.—Like any other history, the history of finance repeats itself. Since the beginning of our present financial structure, there have been innumerable periods of unsatiable speculation and expansion, followed by periods when investors begin to realize that they have been deceived by the former prevailing illusion of an indefinite and unbroken expansion of business.¹ After an era of economic madness, men begin to realize that debts have been incurred in a much greater proportion than wealth and income has warranted.² The financial bubble then bursts and theoretical fortunes disappear. Those who are the most affected by this situation are the investors who purchase securities of corporations, the obligations of which have been increased to such a degree that they are not adequately secured by either the assets or the income of the concern. They are usually induced to purchase these securities by bankers and issuers, who are at times prone to publish vague and untrue statements regarding the financial responsibility of a concern in order that they might sell the securities to their personal gain.³

¹ CHAMBERLAIN AND EDWARDS, *THE PRINCIPLES OF BOND INVESTMENT* (1927) 11; WORMSER, *FRANKENSTEIN, INCORPORATED* (1931) cc. I, II, p. 21. "Those familiar with the operation of Blue Sky Laws today will appreciate that if ever they were needed it was in England in the early Eighteenth Century, for we find organized at that era such projects as companies 'for importing jackasses from Spain,' 'securing perpetual motion,' 'making salt water fresh,' 'an undertaking which should in due time be revealed.' These were rarely incorporated. Most of them were joint stock companies. The inevitable reaction came. The bubble burst. The house of cards fell down." The first two chapters of this book give a comprehensive summary of the history of finance both in Europe and in the New World. WARSHAW, *THE STORY OF WALL STREET* (1931); CLARK, *THE INTERNAL DEBTS OF THE UNITED STATES* (1933) c. I; WOODWARD AND ROSE, *INFLATION* (1933).

² *Ibid.* In the most recent period of so-called prosperity in the United States, the long-term debt increased from a pre-war debt of 37 billion dollars to a post-war figure of 134 billion dollars. The debt, before the war, was 20% of our national wealth. This increased to 45% after the war.

³ *Ibid.*